

General Information Letter: Illinois follows federal income tax determination of whether or not a person is a dependent.

November 2, 1999

Dear:

This is in response to your letter dated October 1, 1999 in which you state the following:

I do taxes and I am taking a class and there is a big disagreement going on in the class and I thought I would write you and get it cleared up for once and for all.

Years ago in the IL 1040 individual income tax return and instructions booklet it said something to the effect that if two people were cohabiting that this was against the law in the state of IL and therefore one of the people could not claim the other person on their taxes. The booklet does not say anything about it now nor does the IL package X.

What I would like is for you to tell me and send me written proof that if two people are cohabiting (living together in a sexual manner) can one person be claimed on the other person tax return. I have always told my clients that it was against the law but as far as I knew no one had ever been arrested for "shacking up" but since it was against the law they could not claim their partner on their federal or state taxes.

In class they are saying that no one can find anything in the booklet or package X book so it was alright to claim the partner as a dependent if he or she does not work.

Please send a answer that will satisfy our class discussion and I would like it to be in writing and site verse and chapter. And if I am right maybe you need to put it back in the IL1040 instruction booklet cause when I called the 1-800-732-8866 they did not seem to know what I was talking about and said to go by federal law. I said federal law said it was okay unless the state law said it was illegal. So they told me to write to your legal division.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill.Adm.Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

According to Section 204 of the Illinois Income Tax Act ("IITA"), the determination with respect to the allowance of deductions for personal exemptions is based on the federal Internal Revenue Code ("IRC"), Section 151. For that reason, the IL-1040 Instructions on page 10 ask for the number of exemptions the taxpayer claimed on his or her federal return. In the event that a taxpayer did

not file a federal income tax return, the exemption allowance is equal to the number of personal exemptions a taxpayer would have taken on a federal return had he or she filed one.

Section 151 of the IRC allows additional exemptions for dependents. A "dependent" is specifically defined in Section 152 of the IRC. For the situation you describe in your letter, an individual qualifies as a dependent only if the following requirements of the IRC are met:

1. the taxpayer provided for more than fifty percent (50%) of the individual's total support, 2. the individual's gross income must be less than the exemption amount,
3. the individual must have lived in the taxpayer's home and been a member of the taxpayer's household for the entire taxable year (temporary absences are ignored if the absences are due to illness, school, vacation, business and military service),
4. the dependent must not have filed a joint return with his or her spouse, and
5. the dependent must be a U.S. citizen, resident, national, or a resident of Canada or Mexico.

Enclosed please find copies of the relevant Sections of the IITA and the IRC. As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Heidi Scott  
Staff Attorney -- Income Tax